

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
MR. CHARLES AYERS
VWP PERMIT NO. 98-0072**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Charles Ayers, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Cloverhill Estates” means Mr. Charles Ayers Association, Inc. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the 72 acre residential community called Cloverhill Estates which is owned and operated by Cloverhill Estates, L.L.C., and is located in Chesterfield County, Virginia bounded by Winterpock and Bethia Roads; Ashlake Parkway and Hull Street (U.S. Route 360).
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 98-0072.

SECTION C: Findings of Fact and Conclusions of Law

1. Cloverhill Estates, L.L.C. owns the 72 acre residential subdivision known as Cloverhill Estates. The Permit was issued to Mr. Charles Ayers on October 13, 1998 and will expire on October 13, 2003.
2. The Permit allows 2.035 acres of impacts to nontidal forested headwater wetlands and 1,326 linear feet of intermittent stream bed located in the proposed 72 acre residential community. The project includes internal roads, water and sewer utility infrastructure, stormwater management facilities and the construction of a portion of Ashbrook Parkway, a four lane planned County thoroughfare. Compensations mitigation is as follows: The creation of a minimum of 3.01 acres of forested wetlands, enhance 0.18 acre of wetlands, and preserve 2.5 acres of wetlands.
3. DEQ was initially notified verbally by the Army Corps of Engineers (ACOE) on September 5, 2001 and then by correspondence dated September 10, 2001, that unauthorized impacts to state waters had occurred at the Cloverhill Estates residential development. On October 3, 2001, DEQ staff and the ACOE met on-site to review and confirm the reported unauthorized impacts to an UT to Dry Creek. On October 24, 2001, DEQ staff, the ACOE and Timmons met on-site to discuss the unauthorized impacts to the UT of Dry Creek.
4. The unauthorized impacts noted on October 3 and October 24, 2001, exceeded the VWP permit limits by approximately 1000 linear feet. The unauthorized impacts included extensive placement of rip rap, installation of biologs, stream channelization, problems with erosion and sedimentation, and the pouring of concrete and construction of a culvert in-stream.
5. In addition, Mr. Charles Ayers failed to provide proof of recordation of the protective instrument prior to initiation of construction activities in State Waters as required by Part I.37 of the Permit.
6. DEQ issued a NOV to Mr. Charles Ayers on December 19, 2001, citing Permit violations which resulted in environmental impact, as listed above, and for failure to submit required documentation.

7. A proposed incomplete permit modification was received by DEQ on January 22, 2002 to address the additional impacts to the unnamed tributary to Dry Creek.
8. A meeting was held on January 24, 2002 with Mr. Ayers, Timmons, the ACOE and DEQ staff to discuss the proposed permit modification. Parts of the proposed permit modification were agreed upon at the meeting and other parts were not. It was decided to meet again on-site to determine which sections of the stream will be restored.
9. On March 15, 2002, DEQ staff met with Timmons, the ACOE, and Mr. Lee Hill from DCR to determine which sections of the stream to restore and the methods of restoration. DEQ requested that Timmons submit a restoration plan to DEQ for incorporation into a Consent Special Order.
10. DEQ has not received a restoration plan from Timmons.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Charles Ayers and Mr. Charles Ayers agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Charles Ayers, and Mr. Charles Ayers voluntarily agrees, to pay a civil charge of \$11,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Mr. Charles Ayers. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Charles Ayers, for good cause shown by Mr. Charles Ayers, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of

this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Charles Ayers admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Charles Ayers consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Charles Ayers declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Charles Ayers to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Charles Ayers shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Charles Ayers shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Charles Ayers shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Charles Ayers. Notwithstanding the foregoing, Mr. Charles Ayers agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Charles Ayers. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Charles Ayers from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Mr. Charles Ayers voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Mr. Charles Ayers voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of
_____, 2002, by _____, who is

(name)
_____ of Cloverhill Estates.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Mr. Charles Ayers shall:

1. **By January 15, 2003**, submit to DEQ, proof of recordation of the written protection for the 25 acre preservation areas as required by Part I.C.3 as referred to by Part I.C.1 in the Permit. Submit a signed and notarized deed of restriction for each individual lot that is a part of the 2.5 acre preservation area. The lots included in the 2.5 acre preservation are lots 31-41. In lieu of submitting proof of recordation of written protection, submit an alternate mitigation plan that may include either additional wetland creation or preservation off-site, or the purchase of credits at an appropriate wetland mitigation bank.
2. **By January 15, 2003**, submit to DEQ for approval a channel restoration *plan* and *schedule* for addressing the unauthorized impacts to the unnamed tributary to Dry Creek in the Cloverhill Estates residential development. (Reformat the Timmons March 18, 2002 memo to provide DEQ with a plan and schedule. Include cross-sectional drawings of the restoration.) This plan shall **incorporate the recommendations** that were proposed at the **March 15, 2002 site visit** by the Army Corp of Engineers, Timmons and DEQ.
3. **Implement** the channel restoration plan and schedule **upon approval**. The approved plan and schedule shall be attached hereto and incorporated herein by reference to this Order.
4. **Maintain** an experienced wetland/fluvial scientist on site daily during the construction of the stream channel restoration in lieu of the submittal of detailed plans and specifications of the restoration project, as agreed by the ACOE, Timmons and DEQ at the March 15, 2002 site visit. Provide a copy of the contract to secure the services of the experienced wetland/fluvial scientist for the stream channel restoration project **by January 15, 2003**.
5. **Submit** to DEQ a photographic monitoring report to document **pre-construction conditions, activities during construction, and post-construction conditions**. Photo monitor the channel restoration activities according to the following: a photo station shall be established to document the construction aspects of the project activities at each impact site as required by the Order. The photograph orientation at each station shall remain constant during all monitoring events. The photographs shall document activities and conditions which may include installation and maintenance of erosion and sediment controls; flagged non-impact surface waters, construction access and staging areas; filling, excavation, and dredging activities; site stabilization, grading and associated restoration activities. Submit the photographic monitoring report **within one month after completion of construction**.
6. **By January 15, 2003**, submit to DEQ a permit *reissuance* request and *permit fee* to address the additional 670 LF of stream and 0.05 acres of forested wetland impacts as outlined in the January 21, 2002 letter from Timmons, addressed to DEQ; and the impacts associated with the Channel Restoration Plan as listed in item #2 above. The reissuance request will also include the mitigation proposal to address these additional impacts by preserving Lot 128, 4.34 acres forested wetlands adjacent to mitigation Area A on the Clover Hill Marketplace parcel.
7. **Annually**, monitor and maintain the restoration sites addressed in this Order for a period of **3 years** upon completion. The maintenance shall include: 1) the repair of any restoration site(s) and; 2) the replacement of any damaged instream structures. Submit to DEQ an **annual** written status report and maintenance photo-monitoring report for the 3 year period, **due January 10 of each year**.
8. Submit all documentation required by this Consent Special Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060